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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/817,483

04/02/2004

Jeffrey E. Habben

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03/25/2008

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JOHNSTON, IA 50131-0552

EXAMINER

BAUM, STUART F

ART UNIT

PAPER NUMBER

1638

NOTIFICATION DATE

DELIVERY MODE

03/25/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/817,483

Applicant(s)

HABBen ET AL.

Examiner

STUART F. BAUM

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19, 21, 22, 33-44, 50-65, 68 and 69 is/are pending in the application.
- 4a) Of the above claim(s) 1-17, 38-43 and 55-65 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18, 19, 33-37, 44, 50-54, 68 and 69 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The amendment filed 12/14/2007 has been entered.
2. Claims 1-19, 21-22, 33-44, 50-65 and 68-69 are pending.

Claims 1-17, 38-43, 55-65 are withdrawn from consideration for being drawn to non-elected inventions.

Claims 20, 23-32, 45-49 and 66-67 have been canceled.

3. Claims 18-19, 33-37, 44, 50-54 and 68-69, including SEQ ID NO:1, 3 and 4 are examined in the present office action.
4. Rejections and objections not set forth below are withdrawn.
5. The text of those sections of Title 35, U.S. Code not included in this office action can be found in a prior office action.

Written Description

6. Claims 18-19, 33-36, 44, 50-53 and 68-69 remain rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This rejection is maintained for the reasons of record set forth in the Official action mailed 6/15/2007. Applicant's arguments filed 12/14/2007 have been fully considered but they are not persuasive.

Applicants contend that *ipt* genes were identified in Arabidopsis in 2001 by Takei, *et al.*, *J. Biol. Chem.* 276:26405-26410 and in Petunia in 2002 by Zubko, *et al.*, *Plant J.*

29(6):797-808 and therefore were known to one of skill in the art as of the filing date of this application (page 8 of Remarks, 4th paragraph).

The Office contends that based on the Takei et al reference, ipt from *Arabidopsis* was known at the time of filing of the instant application. The Office contends the Takei et al reference was considered in the IDS filed 1/13/2006 but the Zubko et al reference has not been submitted by Applicant and therefore has not been considered. Applicants are invited to submit the Zubko et al reference in an IDS for consideration by the Office.

Double Patenting

7. Claims 18-19, 33-37, 44, 50-54 and 68-69 remain rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,992,237 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are obvious over the claims of Patent No. 6,992,237 B1. This rejection is maintained for the reasons of record set forth in the Official action mailed 6/15/2007. Applicant's arguments filed 12/14/2007 have been fully considered but they are not persuasive.

Applicants state "Upon allowance of claims in the present application, a terminal disclaimer to the commonly-owned patent will be executed by the Applicants" (page 9 of Remarks, 5th paragraph).

The Office contends the double patenting rejection is maintained.

8. No claims are allowed.
9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stuart F. Baum whose telephone number is 571-272-0792. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached at 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

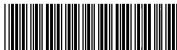
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Stuart F. Baum/
Stuart F. Baum Ph.D.
Primary Examiner
Art Unit 1638
March 11, 2008

Application Number**Application/Control No.**

10/817,483

**Applicant(s)/Patent under
Reexamination**

HABBEN ET AL.

Examiner

STUART F. BAUM

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